

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 06, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ARLIN K. LIDSTROM and  
LAVERNE LIDSTROM, husband and  
wife and the marital community  
comprised thereof,

Plaintiffs,

v.

SCOTLYNN COMMODITIES INC., a  
foreign business entity; and YING H.  
ZHU, individually,

Defendants.

No. 4:23-CV-05144-MKD

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS

**ECF Nos. 21, 25**

Before the Court is Defendant Scotlynn Commodities, Inc.'s ("Scotlynn's")  
Motion for Judgment on the Pleadings. ECF Nos. 21, 25.<sup>1</sup> On June 5, 2024, the

<sup>1</sup> Scotlynn filed its motion on March 7, 2024. ECF No. 21. On March 26, 2024,  
Scotlynn filed a corrected version, which noted a different date for hearing without  
oral argument, but was otherwise identical to the earlier filing. ECF No. 25.

1 Court held a hearing on the motion. Bryce Patrick McPartland appeared on behalf  
2 of Plaintiffs and Jeff M. Sbaih appeared on behalf of Defendants. ECF No. 40.

3 This case concerns an automobile collision involving a truck driven by  
4 Plaintiff Arlin Lidstrom and a semi-truck driven by Defendant Ying H. Zhu and  
5 owned by Scotlynn. *See* ECF No. 1. Mr. Lidstrom and his wife Plaintiff Laverne  
6 Lidstrom filed suit alleging various causes of action pursuant to state negligence  
7 law against Scotlynn and Mr. Zhu. ECF No. 1 at 8. Scotlynn moves to dismiss  
8 several theories of negligence as legally insufficient. ECF No. 25.

9 For the reasons stated below, Scotlynn's motion is granted in part and denied  
10 in part.

### 11 **BACKGROUND**

12 The Complaint alleges the following. ECF No. 1. In March 2022,  
13 Mr. Lidstrom was driving southbound on Route 395 in his 2006 F-250 and hauling  
14 another vehicle. ECF No. 1 at 3-4 ¶¶ 3.1-3.2. At the same time, Mr. Zhu was  
15 driving eastbound on Foster Wells Road in a semi-truck on behalf of Scotlynn.  
16 ECF No. 1 at 4-6 ¶¶ 3.4-3.5, 3.8-3.12.

17 Where the two roads intersect, traffic on Route 395 has the right of way, and  
18 stop signs control traffic on Foster Wells Road. ECF No. 1 at 4 ¶ 3.3. As  
19 Mr. Lidstrom approached the intersection, Mr. Zhu drove into his path, forcing  
20 Mr. Lidstrom to slam on his brakes. ECF No. 1 at 5 ¶ 3.6-3.7. Nevertheless,

1 Mr. Lidstrom's F-250 collided with the semi-truck and trailer in a T-bone fashion,  
2 causing significant damage. ECF No. 1 at 7 ¶ 3.13. Mr. Lidstrom was severely  
3 injured in the collision. ECF No. 1 at 7 ¶ 3.16.

4 On October 19, 2023, Plaintiffs filed a Complaint alleging the following  
5 causes of action:

6 (1) Mr. Zhu was negligent in the operation of the semi-truck, ECF No. 1 at 8  
7 ¶¶ 4.1-4.4;

8 (2) Scotlynn and Mr. Zhu failed duties under the Federal Motor Carrier  
9 Safety Regulations, 49 C.F.R. Parts 40, 303, 325, and/or 350-399, and other  
10 standards related to commercial motor vehicles; ECF No. 1 at 9 ¶ 4.5;

11 (3) Scotlynn negligently trained Mr. Zhu; ECF No. 1 at 9 ¶ 4.8;

12 (4) Scotlynn negligently allowed Mr. Zhu to use its vehicle; ECF No. 1 at 9  
13 ¶ 4.8;

14 (5) Scotlynn negligently maintained the semi-truck and trailer; ECF No. 1 at  
15 9 ¶ 4.8;

1 (6) Scotlynn is liable under *respondeat superior* and vicarious liability for  
2 Mr. Zhu’s negligence; ECF No. 1 at 9 ¶ 4.9.<sup>2</sup>

### 3 LEGAL STANDARD

4 “After the pleadings are closed—but early enough not to delay trial—a party  
5 may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Judgment on  
6 the pleadings is proper when, taking all allegations in the pleading as true, the  
7 moving party is entitled to judgment as a matter of law.” *Stanley v. Trustees of the*  
8 *Cal. State Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006). When considering a Fed. R.  
9 Civ. P. 12(c) motion, a district court “must accept all factual allegations in the  
10 complaint as true and construe them in the light most favorable to the non-moving  
11 party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *Herrera v. Zumiez,*  
12 *Inc.*, 953 F.3d 1063, 1068 (9th Cir. 2020).

### 13 DISCUSSION

14 Scotlynn seeks dismissal of certain theories of liability by advancing two  
15 arguments: (1) it is agreed that Mr. Zhu was Scotlynn’s employee, therefore  
16 certain theories of Scotlynn’s negligence are foreclosed; and (2) there is no cause

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17  
18 <sup>2</sup> Plaintiffs also allege joint and several liability pursuant to RCW 4.22.070’s  
19 exceptions. ECF No. 1 at 9-10 ¶ 4.11. That issue is not before the Court at this  
20 time.

1 of action arising out of regulations. *See* ECF No. 25 at 5-9. Finally, the Court  
2 addresses discovery concerns raised in Plaintiffs’ response. ECF No. 28 at 11-15.

3 **A. Mr. Zhu’s Employment with Scotlynn and Theories of Liability**

4 Defendants admit in their Answer that “Mr. Zhu was acting within the  
5 course and scope of his employment as a driver for Scotlynn, and therefore  
6 Scotlynn is vicariously liable for his negligence, if any.” ECF No. 10 at 2 ¶ 2.4.  
7 The parties agree that Mr. Zhu may be held liable for his negligence, and that  
8 Scotlynn, as Mr. Zhu’s employer, may be held vicariously liable for Mr. Zhu’s  
9 negligence. ECF No. 25 at 5; ECF No. 28 at 3-4; *see also Anderson v. Soap Lake*  
10 *Sch. Dist.*, 423 P.3d 197, 214-15 (Wash. 2018) (“Vicarious liability imposes  
11 liability on an employer for the torts of an employee who is acting on the  
12 employer’s behalf.” (quotations omitted)). Scotlynn argues that this admission  
13 forecloses any theories of “direct negligence” against it. ECF No. 25 at 5-7; ECF  
14 No. 30 at 2-6.

15 Scotlynn primarily relies upon *LaPlant v. Snohomish County*, 271 P.3d 254,  
16 255 (Wash. Ct. App. 2011), and its progeny for the argument. ECF No. 25 at 5-7;  
17 ECF No. 30 at 2-6. In *LaPlant*, Snohomish County deputy sheriffs pursued a  
18 stolen vehicle within which LaPlant was a passenger. 271 P.3d at 255. The driver  
19 lost control, crashed, and LaPlant suffered injury. *Id.* LaPlant sued the County,  
20 alleging that (1) the deputies were negligent and the County was vicariously liable,

1 and (2) the County was negligent in its training, supervision, and monitoring of the  
2 deputies. *Id.* at 255-56.

3 The Washington Court of Appeals explained that negligent hiring, training,  
4 and supervision claims against an employer require that the employee “acted  
5 outside the scope of his or her employment.” *Id.* at 256. Therefore, such claims  
6 are “generally improper when the employer concedes the employee’s actions  
7 occurred within the course and scope of employment.” *Id.* at 257.

8 Scotlynn seeks to expand this principle to prevent recovery for any and all  
9 theories of its own negligence separate from Mr. Zhu’s negligence. The Court  
10 considers each of Plaintiffs’ causes of action in light of this argument.<sup>3</sup>

11 *1. Negligent Training*

12 If an employee acts within the scope of his employment, liability for his  
13 negligence is extended to his employer, in other words, the employer is

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14  
15 <sup>3</sup> At the hearing, Plaintiffs suggested that *LaPlant* should only apply to public  
16 employers. *LaPlant* made findings in terms of “employer and employee,” not  
17 strictly “public employer and employee.” *See generally* 271 P.3d at 256-57.  
18 Additionally, Washington courts have applied *LaPlant* in the context of private  
19 employment. *See, e.g., Garrison v. SagePoint Fin., Inc.*, 345 P.3d 792, 801 (Wash.  
20 Ct. App. 2015).

1 “vicariously liable.” *LaPlant*, 271 P.3d at 256. As the *LaPlant* court explains, it  
2 would be redundant to also allow a “direct” claim against the employer for breach  
3 of the duties it owes as an employer (hiring, training, supervising, etc.). *Id.* at 257.  
4 This is because “[b]oth causes of action rest upon a determination that the  
5 [employee is] negligent and that this negligence was the proximate cause of [the  
6 plaintiff’s] injuries.” *Id.* If the employee was negligent, the employer is liable; if  
7 not, then the employer cannot be liable for negligently training him (there is no tort  
8 for the plaintiff to recover from). *Id.*

9 This same principle was explained in *Gilliam v. DSHS*, 950 P.2d 20, 28  
10 (Wash. Ct. App. 1998). There, plaintiff sued a child protective services  
11 investigator and the State of Washington for an allegedly negligent investigation.  
12 *Id.* at 21-24. The plaintiff argued that Washington should be liable for the  
13 investigator’s conduct (1) vicariously and (2) directly, for negligently supervising  
14 the investigator during the investigation. *Id.* at 28. The Court of Appeals  
15 explained, “[u]nder these circumstances a cause of action for negligent supervision  
16 is redundant.” *Id.*

17 Plaintiffs do not genuinely defend their negligent training claim as legally  
18 cognizable in Washington given the state of the pleadings. *See* ECF No. 28 at 10-  
19 11. Instead, they cite to out-of-jurisdiction precedent to indicate that the tide is  
20 turning on this doctrine. ECF No. 28 at 10-11 (citing *McQueen v. Green*, 202 N.E.

3d 268 (Ill. 2022); *Martin v. Thomas*, 346 So. 3d 238 (La. 2022); *Wright v. Watkins and Shepard Trucking Company*, 972 F. Supp. 2d 1218 (D. Nev. 2013)). Washington courts continue to apply *LaPlant*, as recently as this year. See *LaBounty v. Mount Baker Sch. Dist. No. 507*, No. 84610-8-I, 2024 WL 692500, at \*7 n.9 (Wash. Ct. App. Feb. 20, 2024) (“In Washington, a cause of action for negligent supervision requires a plaintiff to show that an employee acted outside the scope of his or her employment.” (citing *LaPlant*, 271 P.3d at 256)).

Plaintiffs do not allege that Mr. Zhu acted outside of the scope of his employment during the time in question. Therefore, the Complaint lacks legally sufficient factual matter to support a recoverable claim that Scotlynn negligently trained him. Plaintiffs’ negligent training claim is dismissed.

## 2. *Negligent Entrustment*

“A person entrusting a vehicle to another may be liable under a theory of negligent entrustment only if that person knew, or should have known in the exercise of ordinary care, that the person to whom the vehicle was entrusted is reckless, heedless, or incompetent.” *Weber v. Budget Truck Rental, LLC*, 254 P.3d 196, 198 (Wash. Ct. App. 2011) (quoting *Mejia v. Erwin*, 726 P.2d 1032, 1034 (Wash. Ct. App. 1986)). Scotlynn cites to *Niece v. Elmview Grp. Home*, to argue that these “negligent entrustment” claims can only arise outside of the scope of employment. 929 P.2d 420, 425-26 (Wash. 1997).



1       The *Niece* decision discusses a distinct theory of employer negligence,  
2 wherein “the relationship between employer and employee gives rise to a limited  
3 duty, owed by an employer to foreseeable victims, to prevent the tasks, premises,  
4 or instrumentalities entrusted to an employee from endangering others.” *Id.* at 426.  
5 *Niece* recognizes a cause of action where an employer negligently entrusts  
6 instrumentalities, like a semi-truck, to an employee. *Id.* As the *Niece* court  
7 explains, that cause of action, like negligent training, applies where the employee  
8 acts outside the scope of employment. *Id.*

9       However, the *Niece* decision does not concern the broader vehicle-  
10 entrustment common law cause of action recognized in *Weber*, which may be  
11 established without regard to an employer-employee relationship. 254 P.3d at 198.  
12 Scotlynn offers no authority indicating that an employer cannot be liable for  
13 negligent entrustment in addition to vicarious liability for an employee negligence.

14       In fact, *Kaye v. Lowe’s HIW, Inc.* suggests the opposite. 242 P.3d 27, 33-34  
15 (2010). There, the plaintiff sought a default judgment against non-appearing  
16 defendants. *Id.* at 29. Plaintiff alleged that two defendants negligently entrusted a  
17 truck to a third, who then struck her with it in a parking lot. *Id.* Plaintiff also  
18 alleged vicarious liability—that the driver defendant was acting within the scope of  
19 authority granted by, and for the benefit of, the two other defendants. *Id.* The  
20 court’s discussion of the merits of the case noted no conflict between the two

1 theories, though concluded the plaintiff failed to allege sufficient facts for either.  
2 *Id.* at 31-35; *see also Mills v. Southern*, No. 31167-4-II, 2005 Wash. App. LEXIS  
3 1495 (Wash. Ct. App. June 21, 2005) (discussing vicarious liability and negligent  
4 entrustment, with no mention that the theories are mutually exclusive).

5 The Court declines to extend *LaPlant* to negligent entrustment claims  
6 without authority requiring it do so.<sup>4</sup>

7 However, upon review of the allegations in the Complaint, Plaintiffs'  
8 negligent entrustment claim should be dismissed not for legal insufficiency, but for  
9 factual insufficiency. *Stanley*, 433 F.3d at 1133. The *Kaye* court efficiently  
10 explains the problem with Plaintiffs' Complaint in the following quote, modified to  
11 identify the parties of this case:

12 [Plaintiffs'] allegation that [Scotlynn] owned the truck . . .  
13 alone is insufficient to establish a claim of negligent  
14 entrustment. Although [their] complaint further alleged  
that [Scotlynn was] negligent in [its] entrustment of the  
vehicle to [Mr. Zhu], this allegation—which is not a

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15 <sup>4</sup> Admittedly, *LaPlant*'s logic facially applies to this case: if an employer is  
16 vicariously liable for torts caused by the employee with a vehicle, there seems no  
17 point in litigating whether the employer should have known better than to entrust  
18 the vehicle to that employee. 271 P.3d at 256-57. If the employee is liable, so is  
19 the employer; if not, there is no wrongdoing to extend the employer through  
20 negligent entrustment. *Id.*

1 factual allegation, but rather is a legal conclusion—is not  
2 [presumed to be true]. . . . Thus, . . . [Plaintiffs] failed to  
3 plead . . . that [Scotlynn] was negligent in entrusting the  
4 truck to [Mr. Zhu].

5 242 P.3d at 33-34.

6 At most, the Complaint alleges that Mr. Zhu might have been distracted or  
7 tired while operating the semi-truck. ECF No. 1 at 1-8. There are no facts alleged  
8 that give an inference that Scotlynn knew or should have known that Mr. Zhu was  
9 “reckless, heedless, or incompetent.” *Weber*, 254 P.3d at 198. Plaintiffs’ negligent  
10 entrustment claim is dismissed.

### 11 3. *Negligent Maintenance*

12 Scotlynn, without citation, asserts that “[e]ven assuming Mr. Zhu’s truck  
13 was improperly maintained, if his conduct as the driver involved in the accident  
14 did not amount to negligence, then Scotlynn cannot be liable as a matter of law[.]”  
15 ECF No. 25 at 7. Scotlynn seems to propose that it may neglect to maintain its  
16 semi-trucks, which travel on public roads with 100,000lbs loads, and escape  
17 liability so long as the drivers of those vehicles do not operate them negligently.

18 For this proposition, Scotlynn again offers *LaPlant*. ECF No. 25 at 7.  
19 *LaPlant* does not protect an employer from liability for its own negligence simply  
20 because one of its employees was at the forefront of an accident causing injury.  
21 271 P.3d at 256-57. As explained more fully above, *LaPlant* explains that it is  
22 redundant to allow a claim against an employer for failing to exercise care in its

1 hiring, training, or supervising when the resulting harm was caused by the  
2 negligently hired, trained, or supervised employee. *Id.* The rational of the narrow  
3 rule is simple: the employer is already vicariously liable for that harm, so it is  
4 redundant to litigate what should have occurred in hiring, training, or supervising.  
5 *Id.*

6 *LaPlant*, 271 P.3d at 256-57, and *Gilliam*, 950 P.2d at 28, do not concern  
7 situations where the employer committed negligence separate and apart from the  
8 conduct of the employee. Negligence, simply, is duty, breach, injury, and  
9 causation. *Kaye*, 242 P.3d at 33. A showing of those elements creates liability,  
10 barring some other doctrine of law holding otherwise. No such doctrine is  
11 presented here; therefore, it is legally permissible to hold Scotlynn liable for  
12 negligently maintaining the semi-truck without regard to whether Mr. Zhu was  
13 negligent.

14 However, like their negligent entrustment claim, Plaintiffs' negligent  
15 maintenance claim is not supported with any factual allegations in the Complaint.  
16 There are no allegations concerning the condition of the semi-truck or its  
17 maintenance history. Therefore, the Complaint lacks sufficient allegations to give  
18 rise to the inference that Scotlynn failed to adhere to the relevant standard of care  
19 in the maintenance of its trucks. Plaintiffs' negligent maintenance claim is  
20 dismissed.

1           **B.     Causes of Action Relating to Federal Regulations**

2           Scotlynn argues that there is no legally cognizable cause of action arising  
3 out of federal regulations, therefore the Court should dismiss any attempt to hold  
4 Scotlynn liable for violating federal regulations. ECF No. 25 at 7-9.

5           Indeed, there is no private cause of action arising out of the Federal Motor  
6 Carrier Safety Regulations. *See Reichert v. Mendez*, No. CV-22-02163, 2023 WL  
7 1814293, at \*3 (D. Ariz. Feb. 8, 2023) (“nothing within the FMCSR indicates an  
8 intent by Congress to create a private federal cause of action for personal-injury  
9 claims.”). As Plaintiffs conceded at the hearing, the Complaint is not an attempt to  
10 create one. ECF No. 1 at 9 ¶ 4.5. The source of Plaintiffs’ cause of action is  
11 Washington negligence law, which provides that “[a] breach of a duty imposed by  
12 statute, ordinance, or administrative rule shall not be considered negligence per se,  
13 but may be considered by the trier of fact as evidence of negligence[.]” RCW  
14 5.40.050.

15           Defendants owe duties to the public to exercise ordinary care, and  
16 regulations may inform the fact finder as to the extent of those duties. RCW  
17 5.40.050. While Defendants may not be held negligent *per se* for violations of  
18 those regulations, the regulations “may be considered as evidence of negligence.”  
19 *Morse v. Antonellis*, 70 P.3d 125, 126 (Wash. 2003).

1           Given Plaintiffs’ clarification at the hearing, the Court does not construe  
2 Plaintiffs’ reference to federal regulations as the invocation of a federal “regulatory  
3 negligence” cause of action; instead, the reference is a factual assertion of a duty  
4 owed and breached.

5           Somewhat separately, Scotlynn again offers *LaPlant* and *Gilliam* as a  
6 complete shield from liability for its own negligence. ECF No. 30 at 7. For the  
7 reasons stated above, the Court disagrees. Scotlynn may be held liable for its  
8 negligence separate and apart from Mr. Zhu’s conduct, presuming a duty and  
9 breach distinct from negligent hiring, training, or supervision.

10          Scotlynn’s motion is denied to the extent it seeks to dismiss claims for  
11 reference to regulations.

### 12           **C.     Discovery Disputes**

13          There is no discovery motion before the Court, but Plaintiffs express  
14 concern over discovery so far and characterize the instant motion as an  
15 inappropriate attempt “to bar Plaintiffs from properly investigating Defendant  
16 Zhu’s employment history[.]” ECF No. 28 at 12. In addition, the parties have  
17 twice previously submitted discovery letter briefs, which were withdrawn shortly  
18 after filing, indicating some friction in the discovery process thus far. ECF Nos.  
19 23, 24, 32, 33.

20          Fed. R. Civ. P. 26(b)(1) provides as follows:

1 Parties may obtain discovery regarding any nonprivileged  
2 matter that is relevant to any party's claim or defense and  
3 proportional to the needs of the case, considering the  
4 importance of the issues at stake in the action, the amount  
5 in controversy, the parties' relative access to relevant  
6 information, the parties' resources, the importance of the  
7 discovery in resolving the issues, and whether the burden  
8 or expense of the proposed discovery outweighs its likely  
9 benefit. Information within this scope of discovery need  
10 not be admissible in evidence to be discoverable.

11 Moreover, the scope of discovery is "broad." *Republic of Ecuador v. Mackay*, 742  
12 F.3d 860, 866 (9th Cir. 2014).

13 Plaintiffs pursue a claim against Mr. Zhu and Scotlynn alleging Mr. Zhu's  
14 negligent operation of the semi-truck. ECF No. 1 at 8 ¶ 4.1. Scotlynn's admission  
15 that Mr. Zhu is their employee does not render irrelevant evidence related to their  
16 employment relationship, including hiring, training, and other employment files  
17 related to Mr. Zhu. Mr. Zhu's knowledge of relevant industry regulations and  
18 standards, or Scotlynn's internal policies and procedures for drivers, trucks, and  
19 routes, may evidence a disregard for the relevant standard of care. Evidence of the  
20 condition and maintenance of the semi-truck is relevant to whether his operation of  
the vehicle was the sole cause of the collision. Within reason, Scotlynn's internal  
practices, business, structure, etcetera, are relevant to establish a context for  
Mr. Zhu's employment, the semi-truck's operation, and the collision at the heart of  
this case. Plaintiffs are entitled to such discovery, within the limits of  
proportionality established by Fed. R. Civ. P. 26(b)(1).





1           3.     Plaintiff's negligent training, negligent entrustment, and negligent  
2 maintenance claims are **DISMISSED without prejudice.**

3           **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
4 Order and provide copies to the parties.

5                     DATED June 6, 2024.

6                             s/Mary K. Dimke  
7                             MARY K. DIMKE  
8                             UNITED STATES DISTRICT JUDGE  
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